



INTERNATIONAL
BOTTLED WATER
ASSOCIATION

Testimony

Water Withdrawal Legislation

House Great Lakes and Environment Committee

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Madam Chair and members of the Michigan House Great Lakes and Environment Committee, I am Patrick Donoho, Vice President of Government Relations for the International Bottled Water Association (IBWA).

IBWA is the trade association representing all segments of the bottled water industry. Founded in 1958, IBWA member companies include United States and international bottlers, distributors and suppliers, including 10 bottlers and distributors in Michigan. IBWA and its members are committed to working with state and federal governments to set and implement stringent standards for assuring safe, high-quality bottled water products.¹ Because long-term sustainable supply of high-quality water is literally the foundation and "lifeblood" of the enterprises operated by IBWA's members, IBWA and its member companies recognize the critical importance of conservation and stewardship of each basin's water resources.

I am appearing today to provide the industry's views on a series of bills (HB 5065, HB 5066, HB 5067, HB 5068, HB 5069, HB 5070, HB 5071, HB 5072, and HB 5073) that would directly impact on the bottled water industry in Michigan. IBWA and its members support comprehensive groundwater management that is science based, multi-jurisdictional, treats all users equably, and balances the rights of current users against the future needs to provide a sustainable resource. In fact, the industry worked with members of the Administration and the legislature to enact such comprehensive legislation in Michigan in 2006. That law provides a higher standard for approval of bottled water sources than other users of the same resource.² The industry accepted these standards to provide a foundation for a predictable future for the industry. After all, the source water is the life blood of the industry and the health of the aquifers are of vital importance to members of the bottled water industry. I will discuss this further later in my testimony.

¹ In furtherance of this objective, IBWA has developed and published a Model Code, which is available at IBWA's website: http://www.bottledwater.org/public/policies_main.html, setting forth standards for regulation of bottled water production and distribution of IBWA members. The IBWA Model Code is, in several cases, more stringent than state and federal regulations and has been adopted by more than a dozen states as their standard for regulation of bottled water. As a condition of membership, IBWA bottlers must submit to an annual, unannounced inspection for compliance with the Model Code by an independent third party.

² Sec. 17 of 1976 PA 399 (MCL 325.1017)

Bottled Water Industry Background

Bottled water is a processed food product in the United States, and is regulated as such by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 U.S.C. §§ 301 *et seq.*, and several parts of Title 21 of the Code of Federal Regulations ("CFR"). Under the FFDCA, bottled water is fully regulated as a "**food**." The FFDCA defines "food" as "articles used for food **or drink** for man or other animals"³ The FFDCA further defines a "processed food" as "any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling."⁴ As a result, bottled water is subject to the general Good Manufacturing Practice (GMP's) and labeling regulations for all food products,⁵ as well as the bottled water GMP's in 21 CFR 129, and the standards of quality and identity established in FDA rules at 21 CFR Part 165.

In addition, Section 410 of FFDCA requires FDA to review all National Primary Drinking Water Standards (NPDWS) for their applicability to bottled water. FDA is required under this section to establish standards of quality for bottled water that are no less stringent or protective of public health than those for public drinking water. Failure to act within 180 days of the effective date of a NPDWS by FDA results in FDA applying the NPDWS to bottled water. This last provision is commonly known as the "hammer provision."

Under 21 CFR Part 165.110 (a), strict standards of identity are established for bottled water. It is divided into fundamentally two distinct classes of product: natural waters and processed waters. The natural waters include: artesian water, groundwater, mineral water, sparkling water, spring water, and well water. Approximately 75% of the bottled water in the United States is produced from groundwater with the remainder obtaining water sources from public water systems. Processed waters must meet United States Pharmacopoeia 23rd Revision standards for purified water and include the following processes: distilled water deionized water, de-mineralized water, and reverse osmosis. There are numerous brands and companies that produce bottled water within each of these two classifications.

The key point is that bottled water is a beverage product – like soft drinks, milk products, beer and other beverages intended for human consumptions. Although bottled water is the second most consumed beverage, it is about half of the consumption of carbonated soft drinks and only slightly ahead of milk and beer. All such beverages fundamentally involve products that have a high water content, and the manufacture of many such beverages (such as beer) actually

³ 21 U.S.C. § 321(f) (emphasis added).

⁴ 21 U.S.C. § 321(gg).

⁵ 21 C.F.R. § 110.3 *et seq.*

involve the consumption of much more water in the process of producing raw materials, various production processes (such as fermentation and pasteurization), and bottling steps. Bottled water production is a highly efficient process. Based on information gathered in a recent study of the bottled water industry and its water usage in 2001, on average, 87% of the water withdrawn by bottled water companies was actually bottled for consumption by humans.⁶ From the perspective of water management programs, the bottled water industry should be treated no differently than other beverage, food processing and other manufacturing operations.

Bottled Water Use of Groundwater

Bottled water is a de minimus user of groundwater, representing less than 0.02% of all groundwater withdrawn in the United States.⁷ The two largest categories for groundwater withdrawals in Michigan are public water systems and irrigation with each withdrawing twice the amount (247 mgd and 239 mgd respectively) of the self supplied industry category (110 mgd).⁸ In Michigan, food and kindred products withdraw about 14 million gallons per day (mgd) of the approximate total of 750 million gallons per day total groundwater withdrawn.⁹ Even within the food and kindred products category, bottled water is a small percentage of the total withdrawn by this category.

It is interesting to note that the International Joint Commission (IJC) determined that the Great Lakes basin is a net importer of bottled water. In their 2000 final report to the governments of the United States and Canada, they stated:

Analysis of the bottled water industry indicates that when intrabasin trade in bottled water is subtracted from the total trade, the Basin imports about 14 times more bottled water than it exports – 141 million liters (37 million gallons) in 1998 imported vs. 10 million liters (2.6 million gallons) exported.¹⁰

Although development of additional bottling facilities in the basin to address growing basin demand for bottle water may have changed the multiplier

⁶ *Bottled Water Production in the United States: How Much Groundwater Is Actually Being Used?*, www.dwrf.info

⁷ *Bottled Water Production in the United States: How Much Groundwater Is Actually Being Used?*, www.dwrf.info

⁸ USGS, *Estimated Use of Water in the United States in 2000*

⁹ Michigan Department of Environmental Quality, *Water Withdrawals for Self-Supplied Industrial Manufacturing in Michigan 2003*

¹⁰ International Joint Commission, *Protection of the Waters of the Great Lakes, Final Report to the Governments of Canada and the United States* (February 22, 2000) at § 3 (emphasis added).

somewhat since 1999, we have every reason to believe that the Great Lakes Basin continues to be a significant net importer of bottled water.

Thus, the focus on the bottled water industry within the groundwater management debate is not based on the science or hydrology of the withdrawals by the industry as a whole. To single bottled water out in this debate is akin to attempting to manage the water in a bath tub with the faucets running with an eye dropper. Specific projects, whether they are for bottling purposes or micro-chip production, must be based on the science of the particular site. IBWA supports the development of a comprehensive groundwater management framework to assist in making those decisions from a foundation in science. However, such a framework must treat all groundwater withdrawals equitably.

The bills before you call into question, when is a product a product? If bottled water is produced according to FDA regulations, it is without question a product and all products should be treated equally. Under the law enacted by the Michigan legislature in 2006, bottled water companies that want to withdraw 250,000 gallons per day (which is a lower threshold than for other industrial or commercial withdrawals) must demonstrate to the satisfaction of the Department that the following conditions will be met:

- (a) The proposed use is not likely to have an adverse resource impact.
- (b) The proposed use is reasonable under common law principles of water law in Michigan.
- (c) The withdrawal will be conducted in such a manner as to protect riparian rights as defined by Michigan common law.
- (d) The person will undertake activities, if needed, to address hydrologic impacts commensurate with the nature and extent of the withdrawal. These activities may include those related to the stream flow regime, water quality, and aquifer protection.

In addition, the bottler must pay an application fee of \$5,000 (which is not required of other users) and must consult with the local community officials and interested parties. The law also classifies bottled water in containers of less than 5.7 gallons to be a consumptive use. Before making the determination, the Department shall provide public notice and an opportunity for public comment. This was a reasonable approach in 2006 and remains so today.

To the best of our knowledge there have been no applications neither submitted nor approved to date under this new law. IBWA urges you allow the new law to work before making radical changes. Water has been one of the economic engines for growth in Michigan, but it can not continue to play this important role if the resource is locked up to use by companies.

Litigation

Mark Twain said it best, "Whiskey is for drinking, and water is for fighting." The expansion of litigation under the proposed legislation will do little to better the health of the resource. Under current law, aggrieved parties have the option of having the courts intervene in water disputes and settle conflicts. However, I respectfully submit that the judicial branch of government is the best option for managing a renewable resource. Expanding the ability of non-aggrieved parties to enter into litigation will further obfuscate a science based approach to water management and result in a less predictable outcome for potential users of all kinds.

This also applies to providing communities with the ability to enact local ordinances on water withdrawals. Aquifers and surface water do not know political boundaries. One community's approach could be negated by another in terms of the health of the resource. In addition, the cost of hydro geologists and attorneys to defend determinations will only add burdens to already stressed community budgets. There are adequate options for communities to control growth and development without the added authority to regulate water withdrawals over and above the state requirements.

Conclusion

IBWA urges the Committee to allow the 2006 law to operate. The bottled water industry has been a part of the Michigan economy for over 100 years. Making substantial changes may result in unintended consequences. I will gladly answer any questions.